Statement of Michael Stuart, President, Florida Fresh Fruit and Vegetable Association

On behalf of its producer members, Florida Fruit & Vegetable Association (FFVA) appreciates the opportunity to share its views with the Subcommittee on implementation of the country of origin labeling (COOL) provisions contained in the Farm Security and Rural Investment Act of 2002 (Farm Bill). FFVA strongly supports mandatory country of origin labeling of fruits and vegetables, and over the past several months has provided both formal and informal input to the U.S. Department of Agriculture (Department) as it formulates labeling regulations to implement the law.

Mandatory origin labeling for produce will be an important tool for giving U.S. consumers the chance to make a more informed choice about the foods they buy. It is the same information that consumers in many other countries enjoy, as was recently reported by the General Accounting Office. National surveys consistently show overwhelming consumer support for origin labeling of produce. Just as important is the support from producers. Mandatory origin labeling ensures that their products have a consistent identity in a crowded marketplace. Further, it makes it easier for consumers to identify and purchase domestically grown fruits and vegetables.

The Farm Bill labeling provisions for fruits and vegetables is sound in our opinion, and provides the Department sufficient flexibility to create a workable set of regulations for the produce industry. We do not believe it was Congress' intent to create an untenable burden for producers of covered commodities, or their customers at retail. Congress did not intend that the Department create unnecessary and unworkable rules that would add needless cost to the food production and distribution system in the United States. At the end of the day, however, the success or failure of the law will depend greatly on whether the Department's regulations are flexible and workable, or draconian and costly.

Over the past several months, considerable controversy has developed over COOL. Opponents have labeled the law "fatally flawed," and have urged its repeal in Congress. And while the focus of the criticism has been the law itself, in reality it is the Department's "voluntary guidelines" (guidelines) that have generated most of the concern within the industry. A recent editorial from the Packer addresses why overreaction and exaggeration by retailers and others is unnecessary and inappropriate. (Attachment I)

The guidelines were published by the Department in October, 2002 – just over four months after the law's passage. They were highly prescriptive in nature, and created a significant record-keeping burden for businesses throughout the distribution chain – from producers to retailers. For the produce industry, the guidelines failed to recognize or take advantage of existing statutes such as the Perishable Agricultural Commodities Act (PACA), which regulates transactions between sellers and buyers, or the Tariff Act of 1930, which requires labeling of imported packaged products. USDA's cost estimates of the impact of the guidelines exacerbated the controversy by suggesting that the industry would be hit with a $2 billion price tag. A recent General Accounting Office (GAO) study questioned the assumptions used by the Department in its analysis, and further recommended that it collaborate with industry to identify existing programs as alternatives for accomplishing many of the law's requirements. (Attachment II) FFVA has consistently recommended this approach to USDA.

The record-keeping mandate in the guidelines, while rooted in the law, is not required by it. The statute states: "The Secretary **may** require…a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance…"(emphasis added). Since the language says "may" as opposed to "shall," Congress specifically left the decision on record keeping to the Department. It is not bound to require record keeping at all and as we suggested, modest "tweaking" of existing regulations is all that is needed to implement this new law. Similarly, in the area of enforcement – another controversial issue – the statute states: "If the Secretary determines that the retailer has willfully violated [the act], after providing notice and an opportunity for a hearing…the Secretary may fine the retailer in an amount of not more than $10,000 for each violation." And then only for intentional violations after an opportunity for a hearing. The law does not mandate the maximum fine for each violation, as some opponents would lead you to believe. The Department clearly has broad discretion in creating an enforcement matrix that penalizes only the most egregious offenders who consistently and intentionally violate the law.

In the comment period following the release of the guidelines, FFVA submitted both written and oral comments to the Department suggesting ways to improve them developing a more workable, flexible, and less burdensome mandatory regulation. The following is a summary of those recommendations.

The Department should develop separate regulations for each covered commodity specified in the Act.

While the Act's principal goal is simple and straightforward (i.e. providing country of origin information to consumers), we believe the Department should recognize that each covered commodity has different production, distribution, and handling systems. Further, they are each regulated under a different set of laws. We have suggested that the Department provide separate sets of regulatory requirements under the law depending on the nature of the specific covered commodity.

Point of purchase notification should be simple and straightforward.

The statute identifies a wide array of notification methods that can be used at the discretion of the retailer. These include, "label, stamp, mark, placard, or other clear and visible signs on the covered commodity or on the package, display, holding unit or bin containing the commodity at the point of final sale to the consumers." Congress wisely left it to the retailer to determine how best to assure that such information is provided. Thus, the retailer has maximum flexibility in fulfilling the law's requirements.

We have suggested to the Department that the regulations be similarly flexible in the terminology used to denote origin. The guidelines mandate that terms such as "Grown in Country X" or "Produce of Country Y" be used. This is too prescriptive. In the regulations, we have recommended that the Department accept the listing or marking of the individual country name, or recognized abbreviation (i.e. United States or USA) as being sufficient to meet the requirements of the statute.

FFVA also strongly supports the Department incorporating a common sense approach in evaluating the effectiveness of the notification system selected by a retailer. For example, if the retailer has a bin or display of fruit, and a significant amount of the fruit is individually labeled with the country of origin, then the Department should not require additional labeling of the fruit even if some are missing a label. The test of the sufficiency of the notification method should be whether the consumer could make a reasonable decision regarding the country of origin of the

produce at the point of sale. It is recognized that labels can fall off in transit. The retailer should not be penalized if such a situation has occurred.

Labeling of mixed or blended produce should simply list all the countries of origin of the commodities included in the blended product.

The guidelines require blended products, such as bagged salad, list each commodity component by country and predominance of weight, value or other measurement. The law does not require such detail. We have suggested that a simple declaration of the country of origin of the combined components be sufficient. For blended products containing imported components, origin-labeling requirements should mirror the declarations mandated by the Tariff Act of 1930. We believe the Department should not use the general authority under COOL to improperly expand the regulatory requirements of the law or its scope. The Department does not need to incorporate into the regulation any provisions beyond those necessary to assure appropriate implementation of the law's requirements.

Record keeping is not necessary; but, if it is required in the regulations, should be based on the existing requirements of the PACA. These on-going requirements are well known to growers, shippers and retailers.

Again, COOL states that the Secretary may (emphasis added) require the maintenance of a verifiable record-keeping audit trail. The requirements contained in the guidelines create a tremendous burden on the entire industry, and are unnecessary. Florida's Country of Origin law has functioned well since 1979 without a mandated record-keeping system. Florida's law operates under the presumption of truthfulness of the information provided to the point of retail sale. However, in instances when false information is printed on the container, existing federal and state law provides remedies that adequately address those situations. The Department should take the same approach in developing regulations for COOL. There should be no downstream liability for the validity of information provided by a product supplier.

In the event the Department should elect to utilize its discretion under the statute and implement a record-keeping mandate, we have suggested that it should be based on the current requirements of the PACA. Under PACA, retailers and suppliers are already required to maintain certain information and records associated with each produce transaction. This system is very familiar to all persons who operate responsibly in the buying and selling of produce. It seems a rather simple matter for the Department to acknowledge the existence of the current regulatory scheme, and refrain from creating an additional burden.

FFVA believes COOL is a fundamentally sound law that will provide consumers with information regarding the origin of the produce they purchase at retail supermarkets. In implementing the law, the Department has discretion to make it as simple or as difficult as possible for the industry. We have urged them to take the simple approach.

We greatly appreciate the efforts the Department has made to seek input from the industry on this issue – both formally and informally. The suggestions made by our organization have been made by many others, as well. We are hopeful that the draft regulations will be released soon, and will incorporate the flexible common sense approach recommended by the industry.